

# CITY OF LOS ANGELES

CALIFORNIA

INFORMATION TECHNOLOGY  
AGENCY

TED M. ROSS  
GENERAL MANAGER  
CHIEF INFORMATION OFFICER

JOYCE J. EDSON  
ASSISTANT GENERAL MANAGER

RUSSELL M. KAURLOTO  
ASSISTANT GENERAL MANAGER

JEANNE M. HOLM  
ASSISTANT GENERAL MANAGER



ERIC GARCETTI  
MAYOR

ROOM 1400, CITY HALL EAST  
200 NORTH MAIN STREET  
LOS ANGELES, CA 90012  
(213) 978-3311  
FAX (213) 978-3310

ITA.LACITY.ORG

January 25, 2017

REF: CEB-014-17

Honorable Members of the City Council  
City of Los Angeles  
Room 395, City Hall  
Los Angeles, CA 90012

ATTN: Entertainment and Facilities Committee

Subject: **AMENDING ORDINANCE TO PRESERVE L.A. CITY'S RIGHT TO  
CONTINUE TO COLLECT PEG FEES UNDER STATE LAW**

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) as codified in *California Public Utilities Code Section 5800, et seq.*, preempted a California local entity's rights to franchise its cable and video TV operators by transferring cable franchising authority to the California Public Utilities Commission (CPUC). However, DIVCA does allow local governments to establish and collect Public, Educational and Governmental Access (PEG) fees from the City's cable and video TV operators. The state law permits the City to establish by ordinance a PEG fee equal to 1% of gross revenues by ordinance. In 2006, the City added a new article to Chapter 2 of Division 13 of the Los Angeles Administrative Code by adopting Ordinance No. 178108, which took legal effect in 2007. By adoption of Ordinance No. 178108, the City, among other things, authorized the collection of a 5% franchise fee and 1% PEG fee from holders of state video franchises. ITA oversees the collection of those fees.

## Background

DIVCA states that state video franchises issued by the CPUC are given a term of 10 years. The current state-issued franchises to the City's cable/video TV providers will expire in early 2017 for AT&T, and Frontier Communications (formerly Verizon), and in 2018 for Spectrum (formerly Charter/Time Warner Cable) and Cox Communications. These state video franchises can and are being renewed under a highly streamlined procedure adopted by the CPUC.

This is significant because the section of DIVCA that authorized the City to create the PEG fee ordinance also states that "the ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise."<sup>1</sup> At this time, the law is unclear as to whether the "expiration clause" applies to the City's ordinance. A reasonable argument can be made that the clause does not apply for reasons outside the scope of this report. Because substantial funding could be lost *unless* the 1% fee is reauthorized, the Information

<sup>1</sup> *California Public Utilities Code Section 5870(n)*, in relevant part states: "A local entity, may, by ordinance, establish a fee to support PEG channel facilities consistent with federal law that would become effective subsequent to the expiration of any fee imposed pursuant to subdivision (1)... If no such fee exists, the local entity may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues... **The ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise.**" (Emphasis added.)

Technology Agency (ITA) recommends immediate approval by the City of an amending ordinance, to be drafted and submitted by the City Attorney's Office, with the assistance of ITA, pursuant to ITA's recommendation as set forth below. ITA strongly recommends that any such ordinance be put in place before the first state franchise expires in March 2017.

Failure to take such action by the City Council and Mayor may result in the loss of cable/video TV PEG revenue upon which the City's Governmental Access Channel, LACityView, Channel 35, and the City's Educational/Public Access Channel, Channel 36 are dependent. The City's plans to construct a new live audience Channel 35 studio at the El Pueblo de Los Angeles Historic Park may also have to be halted if PEG fees can no longer be collected. (See Council File No. 13-0230.)

### **Fiscal Impact**

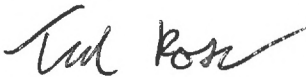
In fiscal year 2016-2017, the City will provide support for LACityView, Channel 35, from PEG fees in the amount of approximately \$3.8 million. The City will also provide to LA36, PEG fee support in the amount of \$505,000. Without continued collection of PEG fees, Channels 35 and 36 may sustain a possible economically catastrophic deficit in their budget funding and if not funded by the City from its General Fund, may cease operations. Also, the City's plans to construct a new studio and live audience theater studio at the El Pueblo de Los Angeles Historic Park may also have to be halted until alternate funding is obtained.

### **Recommendation**

The Information Technology Agency (ITA) recommends that the City Council instruct the City Attorney's Office, with the assistance of ITA, to draft an amending ordinance for the City Council's approval to exercise the City's right to continue to authorize the receipt of PEG fees from its cable/video TV operators.

If you have any questions, please contact Jeanne Holm at (213) 978-3311 or William Imperial at (213) 922-8383.

Sincerely,



Ted Ross  
General Manager and Chief Information Officer

cc: Honorable Mayor Eric Garcetti  
Honorable Ron Galperin, City Controller  
Honorable Councilmember & Chair, Mitch O'Farrell  
Honorable Councilmember & Vice Chair, Paul Krekorian  
Honorable Councilmember Joe Buscaino  
Mike Dundas, Office of the City Attorney  
Claudia Aguilar, Office of City Administrative Officer  
Mandana Khatabshahidi, Office of the Chief Legislative Analyst  
Jeanne Holm, ITA  
William Imperial, ITA